
HOUSE BILL No. 1177

DIGEST OF INTRODUCED BILL

Citations Affected: IC 2-5-1.5-5; IC 3-5-2-48; IC 3-8; IC 3-10-2-7; IC 3-11-2-12; IC 4-1-6-1; IC 4-2; IC 4-3-6-2; IC 4-4-11.6-17; IC 5-8-3.5-1; IC 5-14-3-3.5; IC 5-24-1-2; IC 8-1-1.1; IC 8-1-6-2.

Synopsis: Election of utility consumer counselor. Provides for the election of the utility consumer counselor. Makes technical changes.

Effective: Upon passage; January 1, 2011.

Moses, Battles

January 7, 2010, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

HOUSE BILL No. 1177

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 2-5-1.5-5, AS AMENDED BY P.L.127-2008,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2011]: Sec. 5. As used in this chapter, "public officer"
4 refers to any of the following:

- 5 (1) The governor.
- 6 (2) The lieutenant governor.
- 7 (3) The secretary of state.
- 8 (4) The auditor of state.
- 9 (5) The treasurer of state.
- 10 (6) The attorney general.
- 11 (7) The state superintendent of public instruction.
- 12 **(8) The utility consumer counselor.**
- 13 ~~(8)~~ **(9)** A justice of the supreme court of Indiana.
- 14 ~~(9)~~ **(10)** A judge of the court of appeals of Indiana.
- 15 ~~(10)~~ **(11)** A judge of the Indiana tax court.
- 16 ~~(11)~~ **(12)** A judge of a circuit, superior, probate, or county court.
- 17 ~~(12)~~ **(13)** A member of the general assembly.



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SECTION 2. IC 3-5-2-48 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE UPON PASSAGE]: Sec. 48. "State office" refers to **the following offices:**

- (1) **The** governor.
- (2) **The** lieutenant governor.
- (3) **The** secretary of state.
- (4) **The** auditor of state.
- (5) **The** treasurer of state.
- (6) **The** superintendent of public instruction.
- (7) **The** attorney general.
- (8) **A** justice of the supreme court.
- (9) **A** judge of the court of appeals. ~~and~~
- (10) **A** judge of the tax court.
- (11) **The utility consumer counselor.**

SECTION 3. IC 3-8-1-33, AS AMENDED BY P.L.2-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 33. (a) A candidate for an office listed in subsection (b) must file a statement of economic interests.

(b) Whenever a candidate for any of the following offices is also required to file a declaration of candidacy or is nominated by petition, the candidate shall file a statement of economic interests before filing the declaration of candidacy or declaration of intent to be a write-in candidate, before the petition of nomination is filed, before the certificate of nomination is filed, or before being appointed to fill a candidate vacancy under IC 3-13-1 or IC 3-13-2:

- (1) Governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, **utility consumer counselor**, and state superintendent of public instruction, in accordance with IC 4-2-6-8.
- (2) Senator and representative in the general assembly, in accordance with IC 2-2.1-3-2.
- (3) Justice of the supreme court, judge of the court of appeals, judge of the tax court, judge of a circuit court, judge of a superior court, judge of a county court, judge of a probate court, and prosecuting attorney, in accordance with IC 33-23-11-14 and IC 33-23-11-15.

SECTION 4. IC 3-8-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A political party shall conduct a state convention to nominate the candidates of the political party for the following offices to be voted on at the next general election:

- (1) Lieutenant governor.

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- (2) Secretary of state.
- (3) Auditor of state.
- (4) Treasurer of state.
- (5) Attorney general.
- (6) Superintendent of public instruction.
- (7) Utility consumer counselor.**

(b) The convention shall also:

- (1) nominate candidates for presidential electors and alternate electors; and
- (2) elect the delegates and alternate delegates to the national convention of the political party.

SECTION 5. IC 3-10-2-7, AS AMENDED BY P.L.230-2005, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The following public officials shall be elected in 2006 and every four (4) years thereafter:

- (1) Secretary of state.
- (2) Auditor of state.
- (3) Treasurer of state.

(4) Utility consumer counselor.

SECTION 6. IC 3-11-2-12, AS AMENDED BY P.L.146-2008, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. The following offices shall be placed on the general election ballot in the following order:

- (1) Federal and state offices:
 - (A) President and Vice President of the United States.
 - (B) United States Senator.
 - (C) Governor and lieutenant governor.
 - (D) Secretary of state.
 - (E) Auditor of state.
 - (F) Treasurer of state.
 - (G) Attorney general.
 - (H) Superintendent of public instruction.

(I) Utility consumer counselor.

(J) United States Representative.

- (2) Legislative offices:
 - (A) State senator.
 - (B) State representative.
- (3) Circuit offices and county judicial offices:
 - (A) Judge of the circuit court, and unless otherwise specified under IC 33, with each division separate if there is more than one (1) judge of the circuit court.
 - (B) Judge of the superior court, and unless otherwise specified

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under IC 33, with each division separate if there is more than one (1) judge of the superior court.

(C) Judge of the probate court.

(D) Judge of the county court, with each division separate, as required by IC 33-30-3-3.

(E) Prosecuting attorney.

(F) Clerk of the circuit court.

(4) County offices:

(A) County auditor.

(B) County recorder.

(C) County treasurer.

(D) County sheriff.

(E) County coroner.

(F) County surveyor.

(G) County assessor.

(H) County commissioner.

(I) County council member.

(5) Township offices:

(A) Township assessor (only in a township referred to in IC 36-6-5-1(d)).

(B) Township trustee.

(C) Township board member.

(D) Judge of the small claims court.

(E) Constable of the small claims court.

(6) City offices:

(A) Mayor.

(B) Clerk or clerk-treasurer.

(C) Judge of the city court.

(D) City-county council member or common council member.

(7) Town offices:

(A) Clerk-treasurer.

(B) Judge of the town court.

(C) Town council member.

SECTION 7. IC 4-1-6-1, AS AMENDED BY P.L.2-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 1. ~~As used in~~ **The following definitions apply throughout this chapter: the term:**

~~(a)~~ **(1)** "Personal information system" means any recordkeeping process, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.

~~(b)~~ **(2)** "Personal information" means any information that

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describes, locates, or indexes anything about an individual or that affords a basis for inferring personal characteristics about an individual including, but not limited to, ~~his~~ **the individual's** education, financial transactions, medical history, criminal or employment records, finger and voice prints, photographs, or ~~his~~ **the individual's** presence, registration, or membership in an organization or activity or admission to an institution.

~~(c)~~ **(3)** "Data subject" means an individual about whom personal information is indexed or may be located under ~~his~~ **the individual's** name, personal number, or other identifiable particulars, in a personal information system.

~~(d)~~ **(4)** "State agency" means every agency, board, commission, department, bureau, or other entity of the administrative branch of Indiana state government, except those which are the responsibility of **any of the following**:

- (A)** The auditor of state.
- (B)** ~~The~~ treasurer of state.
- (C)** ~~The~~ secretary of state.
- (D)** ~~The~~ attorney general.
- (E)** ~~The~~ superintendent of public instruction. ~~and excepting~~
- (F)** ~~The~~ utility consumer counselor.
- (G)** ~~The~~ department of state police ~~and~~ department.
- (H)** ~~The~~ state educational institutions.

~~(e)~~ **(5)** "Confidential" means information which has been so designated by statute or by promulgated rule or regulation based on statutory authority.

SECTION 8. IC 4-2-1-1.5, AS ADDED BY P.L.43-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 1.5. (a) Subject to subsection (b), the salary of the state elected officials other than the governor is as follows:

- (1) For the lieutenant governor, seventy-six thousand dollars (\$76,000) per year. However, the lieutenant governor is not entitled to receive per diem allowance for performance of duties as president of the senate.
- (2) For the secretary of state, sixty-six thousand dollars (\$66,000) per year.
- (3) For the auditor of state, sixty-six thousand dollars (\$66,000) per year.
- (4) For the treasurer of state, sixty-six thousand dollars (\$66,000) per year.
- (5) For the attorney general, seventy-nine thousand four hundred dollars (\$79,400) per year.

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(6) For the state superintendent of public instruction, seventy-nine thousand four hundred dollars (\$79,400) per year.

(7) For the utility consumer counselor, one hundred thousand dollars (\$100,000).

(b) Beginning January 1, 2008, the part of the total salary of a state elected official is increased on January 1 of each year after a year in which the general assembly does not amend this section to provide a salary increase for the state elected official. **Beginning January 1, 2012, the part of the total salary of the utility consumer counselor is increased as provided in this section for the other state elected officials.**

(c) The percentage by which salaries are increased under this section is equal to the statewide average percentage, as determined by the budget director, by which the salaries of state employees in the executive branch who are in the same or a similar salary bracket exceed, for the current state fiscal year, the salaries of executive branch state employees in the same or a similar salary bracket that were in effect on January 1 of the immediately preceding year.

(d) The amount of a salary increase under this section is equal to the amount determined by applying the percentage increase for the particular year to the salary of the state elected official, as previously adjusted under this section, that is in effect on January 1 of the immediately preceding year.

(e) A state elected official is not entitled to receive a salary increase under this section on January 1 of a state fiscal year in which state employees described in subsection (c) do not receive a statewide average salary increase.

(f) If a salary increase is required under this section, an amount sufficient to pay for the salary increase is appropriated from the state general fund.

SECTION 9. IC 4-2-6-1, AS AMENDED BY P.L.2-2007, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(1) "Advisory body" means an authority, a board, a commission, a committee, a task force, or other body designated by any name of the executive department that is authorized only to make nonbinding recommendations.

(2) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a council, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The

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term includes a body corporate and politic set up as an instrumentality of the state and a private, nonprofit, government related corporation. The term does not include any of the following:

- (A) The judicial department of state government.
- (B) The legislative department of state government.
- (C) A state educational institution.
- (D) A political subdivision.

(3) "Appointing authority" means the chief administrative officer of an agency. The term does not include a state officer.

(4) "Assist" means to:

- (A) help;
- (B) aid;
- (C) advise; or
- (D) furnish information to;

a person. The term includes an offer to do any of the actions in clauses (A) through (D).

(5) "Business relationship" includes the following:

- (A) Dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:
 - (i) a pecuniary interest in a contract or purchase with the agency; or
 - (ii) a license or permit requiring the exercise of judgment or discretion by the agency.

- (B) The relationship a lobbyist has with an agency.

- (C) The relationship an unregistered lobbyist has with an agency.

(6) "Commission" refers to the state ethics commission created under section 2 of this chapter.

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(8) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.

(9) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation. For purposes of this chapter, a customer or client of a self-employed individual in a sole proprietorship or a professional practice is not considered to be an employer.

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(10) "Financial interest" means an interest:

- (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(11) "Information of a confidential nature" means information:

- (A) obtained by reason of the position or office held; and
- (B) which:
 - (i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);
 - (ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or
 - (iii) is not in a public record, but if it were, would be confidential.

(12) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

(13) "Political subdivision" means a county, city, town, township, school district, municipal corporation, special taxing district, or other local instrumentality. The term includes an officer of a political subdivision.

(14) "Property" has the meaning set forth in IC 35-41-1-23.

(15) "Represent" means to do any of the following on behalf of a person:

- (A) Attend an agency proceeding.
- (B) Write a letter.
- (C) Communicate with an employee of an agency.

(16) "Special state appointee" means a person who is:

- (A) not a state officer or employee; and
- (B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:

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- (i) is authorized by statute or executive order; and
 (ii) functions in a policy or an advisory role in the executive
 (including the administrative) department of state
 government, including a separate body corporate and politic.
 (17) "State officer" means any of the following:

- (A) The governor.
 (B) The lieutenant governor.
 (C) The secretary of state.
 (D) The auditor of state.
 (E) The treasurer of state.
 (F) The attorney general.
 (G) The superintendent of public instruction.

(H) The utility consumer counselor.

(18) The masculine gender includes the masculine and feminine.

(19) The singular form of any noun includes the plural wherever appropriate.

(b) The definitions in IC 4-2-7 apply throughout this chapter.

SECTION 10. IC 4-2-6-8, AS AMENDED BY P.L.89-2006,
 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 JANUARY 1, 2011]: Sec. 8. (a) The following persons shall file a
 written financial disclosure statement:

(1) The following:

- (A)** The governor.
(B) The lieutenant governor.
(C) The secretary of state.
(D) The auditor of state.
(E) The treasurer of state.
(F) The attorney general. ~~and~~
(G) The state superintendent of public instruction.
(H) The utility consumer counselor.

(2) Any candidate for one (1) of the offices in subdivision (1) who is not the holder of one (1) of those offices.

(3) Any person who is the appointing authority of an agency.

(4) The director of each division of the department of administration.

(5) Any purchasing agent within the procurement division of the department of administration.

(6) Any agency employee, special state appointee, former agency employee, or former special state appointee with final purchasing authority.

(7) An employee required to do so by rule adopted by the inspector general.

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(b) The statement shall be filed with the inspector general as follows:

(1) Not later than February 1 of every year, in the case of the state officers and employees enumerated in subsection (a).

(2) If the individual has not previously filed under subdivision (1) during the present calendar year and is filing as a candidate for a state office listed in subsection (a)(1), before filing a declaration of candidacy under IC 3-8-2 or IC 3-8-4-11, petition of nomination under IC 3-8-6, or declaration of intent to be a write-in candidate under IC 3-8-2-2.5, or before a certificate of nomination is filed under IC 3-8-7-8, in the case of a candidate for one (1) of the state offices (unless the statement has already been filed when required under IC 3-8-4-11).

(3) Not later than sixty (60) days after employment or taking office, unless the previous employment or office required the filing of a statement under this section.

(4) Not later than thirty (30) days after leaving employment or office, unless the subsequent employment or office requires the filing of a statement under this section.

The statement must be made under affirmation.

(c) The statement shall set forth the following information for the preceding calendar year or, in the case of a state officer or employee who leaves office or employment, the period since a previous statement was filed:

(1) The name and address of any person known:

(A) to have a business relationship with the agency of the state officer or employee or the office sought by the candidate; and

(B) from whom the state officer, candidate, or the employee, or that individual's spouse or unemancipated children received a gift or gifts having a total fair market value in excess of one hundred dollars (\$100).

(2) The location of all real property in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children has an equitable or legal interest either amounting to five thousand dollars (\$5,000) or more or comprising ten percent (10%) of the state officer's, candidate's, or the employee's net worth or the net worth of that individual's spouse or unemancipated children. An individual's primary personal residence need not be listed, unless it also serves as income property.

(3) The names and the nature of the business of the employers of the state officer, candidate, or the employee and that individual's

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spouse.

(4) The following information about any sole proprietorship owned or professional practice operated by the state officer, candidate, or the employee or that individual's spouse:

(A) The name of the sole proprietorship or professional practice.

(B) The nature of the business.

(C) Whether any clients are known to have had a business relationship with the agency of the state officer or employee or the office sought by the candidate.

(D) The name of any client or customer from whom the state officer, candidate, employee, or that individual's spouse received more than thirty-three percent (33%) of the state officer's, candidate's, employee's, or that individual's spouse's nonstate income in a year.

(5) The name of any partnership of which the state officer, candidate, or the employee or that individual's spouse is a member and the nature of the partnership's business.

(6) The name of any corporation (other than a church) of which the state officer, candidate, or the employee or that individual's spouse is an officer or a director and the nature of the corporation's business.

(7) The name of any corporation in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children own stock or stock options having a fair market value in excess of ten thousand dollars (\$10,000). However, if the stock is held in a blind trust, the name of the administrator of the trust must be disclosed on the statement instead of the name of the corporation. A time or demand deposit in a financial institution or insurance policy need not be listed.

(8) The name and address of the most recent former employer.

(9) Additional information that the person making the disclosure chooses to include.

Any such state officer, candidate, or employee may file an amended statement upon discovery of additional information required to be reported.

(d) A person who:

(1) fails to file a statement required by rule or this section in a timely manner; or

(2) files a deficient statement;

upon a majority vote of the commission, is subject to a civil penalty at a rate of not more than ten dollars (\$10) for each day the statement

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remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

(e) A person who intentionally or knowingly files a false statement commits a Class A infraction.

SECTION 11. IC 4-3-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 2. ~~As used in~~ **The following definitions apply throughout** this chapter:

(1) "Agency" means any executive or administrative department, commission, council, board, bureau, division, service, office, officer, administration, or other establishment in the executive or administrative branch of the state government not provided for by the constitution. ~~The term~~ "Agency" does not include the following:

(A) ~~The~~ secretary of state.

(B) The auditor of state.

(C) The treasurer of state.

(D) The lieutenant governor.

(E) The state superintendent of public instruction. ~~and~~

(F) The attorney general. ~~nor~~

(G) **The utility consumer counselor.**

(H) The departments of which ~~they~~ **any of the officers listed in clauses (A) through (G)** are, by the statutes first adopted setting out their duties, the administrative heads.

(2) "Reorganization" means:

(A) the transfer of the whole or any part of any agency, or of the whole or any part of the functions thereof, to the jurisdiction and control of any other agency;

(B) the abolition of all or any part of the functions of any agency;

(C) the consolidation or coordination of the whole or any part of any agency, or of the whole or any part of the functions thereof, with the whole or any part of any other agency or the functions thereof;

(D) the consolidation or coordination of any part of any agency or the functions thereof with any other part of the same agency or the functions thereof;

(E) the authorization of any officer to delegate any of ~~his~~ **the officer's** functions; or

(F) the abolition of the whole or any part of any agency which agency or part does not have, or upon the taking effect of a reorganization plan will not have, any functions.

SECTION 12. IC 4-4-11.6-17, AS ADDED BY P.L.2-2009,

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SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. Before negotiating the terms of, entering into, or accepting assignment of a contract under this chapter, the authority shall consult with the ~~consumer counselor of the office of~~ utility consumer counselor. ~~appointed under IC 8-1-1.1-3.~~

SECTION 13. IC 5-8-3.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 1. (a) An officer who wants to resign shall give written notice of the officer's resignation as follows:

(1) The governor and lieutenant governor shall notify the principal clerk of the house of representatives and the principal secretary of the senate to act in accordance with Article 5, Section 10 of the Constitution of the State of Indiana. The clerk and the secretary shall file a copy of the notice with the office of the secretary of state.

(2) A member of the general assembly shall notify the following, whichever applies:

(A) A member of the senate shall notify the president pro tempore of the senate.

(B) A member of the house of representatives shall notify the speaker of the house of representatives.

(3) The following officers ~~commissioned by the governor under IC 4-3-1-5~~ shall notify the governor:

(A) An elector or alternate elector for President and Vice President of the United States.

(B) The **following officers:**

(i) **The** secretary of state.

(ii) **The** auditor of state.

(iii) **The** treasurer of state.

(iv) **The** superintendent of public instruction. ~~or~~

(v) **The** attorney general.

(vi) **The utility consumer counselor.**

(C) An officer elected by the general assembly, the senate, or the house of representatives.

(D) A justice of the Indiana supreme court, judge of the Indiana court of appeals, or judge of the Indiana tax court.

(E) A judge of a circuit, city, county, probate, superior, town, or township small claims court.

(F) A prosecuting attorney.

(G) A circuit court clerk.

(H) A county auditor, county recorder, county treasurer, county sheriff, county coroner, or county surveyor.

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(4) An officer of a political subdivision (as defined by IC 36-1-2-13) other than an officer listed in subdivision (3) shall notify the circuit court clerk of the county containing the largest percentage of population of the political subdivision.

(5) An officer not listed in subdivisions (1) through (4) shall notify the person or entity from whom the officer received the officer's appointment.

(b) A person or an entity that receives notice of a resignation and does not have the power to fill the vacancy created by the resignation shall, not later than seventy-two (72) hours after receipt of the notice of resignation, give notice of the vacancy to the person or entity that has the power to:

(1) fill the vacancy; or

(2) call a caucus for the purpose of filling the vacancy.

SECTION 14. IC 5-14-3-3.5, AS AMENDED BY P.L.177-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 3.5. (a) As used in this section, "state agency" has the meaning set forth in IC 4-13-1-1. The term does not include the office of the following elected state officials:

(1) **The** secretary of state.

(2) **The** auditor **of state**.

(3) **The** treasurer **of state**.

(4) **The** attorney general.

(5) **The** superintendent of public instruction.

(6) The utility consumer counselor.

However, each state office described in subdivisions (1) through ~~(5)~~ (6) and the judicial department of state government may use the computer gateway administered by the office of technology established by IC 4-13.1-2-1, subject to the requirements of this section.

(b) As an additional means of inspecting and copying public records, a state agency may provide enhanced access to public records maintained by the state agency.

(c) If the state agency has entered into a contract with a third party under which the state agency provides enhanced access to the person through the third party's computer gateway or otherwise, all of the following apply to the contract:

(1) The contract between the state agency and the third party must provide for the protection of public records in accordance with subsection (d).

(2) The contract between the state agency and the third party may provide for the payment of a reasonable fee to the state agency by either:

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- 1 (A) the third party; or
 2 (B) the person.
 3 (d) A contract required by this section must provide that the person
 4 and the third party will not engage in the following:
 5 (1) Unauthorized enhanced access to public records.
 6 (2) Unauthorized alteration of public records.
 7 (3) Disclosure of confidential public records.
 8 (e) A state agency shall provide enhanced access to public records
 9 only through the computer gateway administered by the office of
 10 technology.
 11 SECTION 15. IC 5-24-1-2, AS AMENDED BY P.L.2-2007,
 12 SECTION 107, IS AMENDED TO READ AS FOLLOWS
 13 [EFFECTIVE JANUARY 1, 2011]: Sec. 2. Unless the supervising
 14 body of the branch, institution, or office elects to have this article apply
 15 and records the election with the state board of accounts, this article
 16 does not apply to the following:
 17 (1) The judicial branch.
 18 (2) The legislative branch.
 19 (3) A state educational institution.
 20 (4) The offices of the **following**:
 21 (A) **The** secretary of state.
 22 (B) **The** auditor of state.
 23 (C) **The** treasurer of state.
 24 (D) **The** attorney general.
 25 (E) **The** superintendent of public instruction. ~~and~~
 26 (G) **The utility consumer counselor.**
 27 (H) The clerk of the supreme court.
 28 SECTION 16. IC 8-1-1.1-1 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 1. As used in this
 30 chapter:
 31 "Council" ~~means~~ **refers to** the advisory council to the office of
 32 utility consumer counselor created under section 7 of this chapter.
 33 "~~Counselor~~" ~~means the consumer counselor established under~~
 34 ~~section 2 of this chapter.~~
 35 "Deputy consumer counselor" ~~means~~ **refers to** the deputy **utility**
 36 consumer counselor for Washington affairs that may be established
 37 under section 9.1 of this chapter.
 38 "Utility" means any public utility, municipally owned utility, or
 39 subscriber owned utility under the jurisdiction of the commission.
 40 SECTION 17. IC 8-1-1.1-2 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 2. **(a)** There is
 42 created the office of utility consumer counselor.

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(b) The office shall be administered by the **utility** consumer counselor ~~appointed under~~ **elected as provided in** section 3 of this chapter.

SECTION 18. IC 8-1-1.1-3, AS AMENDED BY P.L.27-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 3. The ~~governor~~ **voters of Indiana** shall ~~appoint~~ **elect** a **utility** consumer counselor. ~~for~~

(b) ~~The utility consumer counselor serves~~ a term of four (4) years. ~~at a salary to be fixed by the governor. The counselor shall serve at the will and pleasure of the governor.~~

(c) The **utility consumer** counselor ~~shall~~ **must** be a practicing attorney. ~~and qualified by knowledge and experience to practice in utility regulatory agency proceedings.~~

(d) The **utility consumer** counselor shall apply ~~the counselor's~~ full efforts to the duties of the office and may not engage in any occupation, practice, profession, or business that would conflict with the duties of the office.

SECTION 19. IC 8-1-1.1-4.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 4.1. (a) The **utility** consumer counselor may appear on behalf of ratepayers, consumers, and the public in **any of the following**:

(1) Hearings before the commission, the department of state revenue, or the Indiana department of transportation.

(2) Appeals from the orders of the commission, the department of state revenue, or the Indiana department of transportation. ~~and~~

(3) Suits and actions in a court that may involve rates for service, services, extensions, and contracts for service, valuations of utilities, applications of utilities for authority to issue securities, applications for mergers and sales, and in all other proceedings, including proceedings before federal agencies, and suits and actions in which the subject matter of the action affects the consumers of a utility, motor carrier, or railroad doing business in Indiana.

(b) The **utility consumer** counselor shall decide whether to appeal an order of the commission, the department of state revenue, or the Indiana department of transportation and may on the **utility consumer** counselor's own motion initiate an appeal.

SECTION 20. IC 8-1-1.1-5.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 5.1. (a) The commission, the department of state revenue, or the Indiana department of transportation shall immediately notify the **utility consumer** counselor of the institution of any proceeding before the commission,

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the department of state revenue, or the Indiana department of transportation in which the **utility consumer** counselor is authorized to appear and shall transmit to the **utility consumer** counselor a copy of the petition or complaint filed.

(b) The commission, the department of state revenue, or the Indiana department of transportation may not proceed to hear a petition, complaint, or proceeding in which the **utility consumer** counselor is entitled to appear until the **utility consumer** counselor has been given at least ten (10) days notice, unless the **utility consumer** counselor waived the notice.

(c) The **utility** consumer counselor may call the **utility consumer** counselor's own witnesses to testify before a proceeding or hearing in which the **utility consumer** counselor makes an appearance, and may require the production for examination of books and papers relating to a matter under investigation and in question before the commission, another agency, or a court.

(d) The **utility** consumer counselor has the right, with the consent of the petitioners or complainants, whenever a petition is filed on behalf of the ratepayers, consumers, or the public, to make amendments to the petition or complaint that the **utility consumer** counselor considers advisable.

(e) In all proceedings before the commission, the department of state revenue, or the Indiana department of transportation and in a court in which the **utility** consumer counselor shall appear, the **utility** consumer counselor shall have charge of the interests of the ratepayers and consumers of the utility, motor carrier, or railroad involved. The **utility consumer** counselor may give notice of the hearings to all municipalities, corporations, or organizations and persons that are parties to the proceedings, suit, or action other than the utility, motor carrier, or railroad.

SECTION 21. IC 8-1-1.1-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 6.1. (a) The **utility** consumer counselor may employ and fix the compensation of ~~with the approval of the governor and the budget agency~~, accountants, utility economists, engineers, attorneys, stenographers, or other assistance necessary to carry out the duties of the office. The compensation of the **utility** consumer counselor and the counselor's staff shall be paid from an appropriation made for that purpose by the general assembly, or with the approval of the governor and the budget agency, from a contingency fund established under IC 8-1-6-1.

(b) The **utility** consumer counselor may make use of engineers, experts, and accountants employed by the commission or the Indiana

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department of transportation and direct them to make appraisals and audits in the performance of the **utility** consumer counselor's duties under this chapter and IC 8-1-1 and IC 8-1-2. In so doing, the **utility** consumer counselor shall have access to the records and files of the commission or the Indiana department of transportation.

(c) The **utility** consumer counselor may employ ~~with the approval of the governor and the budget agency~~, additional stenographers, examiners, experts, engineers, assistant counselors, accountants, and consulting firms with expertise in utility, motor carrier, or railroad economics or management or both, at salaries and compensation and for a length of time as the governor and the budget agency may approve for a particular case or investigation. The compensation for the additional personnel together with the cost of transportation, hotel, telegram, and telephone bills while traveling on public business shall be paid from the expert witness fee account, or, with the approval of the governor and the budget agency, from a contingency fund established under IC 8-1-6-1 on warrants drawn by the auditor of state, sworn to by the parties who incurred the expenses.

(d) Expenses incurred by the regular staff of the office and approved by the **utility** consumer counselor, or an expense incurred by the commission or the Indiana department of transportation under subsection (b), shall be charged and paid in the manner provided in IC 8-1-2-70 or IC 8-1-6, whichever is appropriate under the circumstances.

(e) Nothing in this chapter may be construed to prevent a party interested in a proceeding, suit, or action from appearing in person or from being represented by counsel.

(f) Persons hired by the **utility** consumer counselor as provided by this section are exempt from the job classifications and compensation schedules established under IC 4-15.

(g) The **utility** consumer counselor may purchase, lease, or otherwise acquire sufficient technical equipment necessary for the **utility** consumer counselor to carry out the **utility** consumer counselor's statutory duties.

SECTION 22. IC 8-1-1.1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 7. (a) There is created the advisory council to the office of the utility consumer counselor. The council consists of ten (10) members. Each Indiana congressional district must be represented by at least one (1) individual appointed under this section who is a resident of that congressional district.

(b) Members of the council, including those filling vacancies

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occurring in the council membership, shall be appointed by the governor. All members shall be appointed to a term of four (4) years, except those who have been appointed to fill a vacancy in the council whose term will be the unexpired portion of the term. All members shall serve until their successor has been duly appointed and qualified.

(c) The membership shall be representative of the various sectors of Indiana economy, including, but not limited to: agriculture, business and industry, labor, and local government.

(d) The members shall annually elect of themselves a chairman.

(e) Members are entitled to receive per diem and travel expense reimbursement at the standard rates provided for state employees for expenses they incur in the performance of their duties under this chapter subject to the approval of the **utility** consumer counselor.

SECTION 23. IC 8-1-1.1-8.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 8.1. (a) The council shall meet at the call of the chairman or the **utility** consumer counselor.

(b) The council shall receive, review, and advise the **utility** consumer counselor with respect to problems and concerns of ratepayers and consumers arising from the regulation of utilities, motor carriers, or railroads in Indiana. The office of ~~the~~ **utility** consumer counselor shall provide necessary clerical and staff assistance for the council.

SECTION 24. IC 8-1-1.1-9.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 9.1. (a) The ~~governor~~ **utility consumer counselor** may appoint a deputy **utility** consumer counselor for Washington affairs. ~~The utility consumer counselor may advise the governor in the appointment of a deputy consumer counselor for Washington affairs.~~

(b) The deputy **utility** consumer counselor shall serve for a term of four (4) years at a salary to be fixed by the ~~governor~~ **utility consumer counselor**. The deputy shall serve at the pleasure of the ~~governor~~ **utility consumer counselor**. The deputy **utility** consumer counselor shall be a practicing attorney, and qualified by knowledge and experience to practice in utility regulatory agency proceedings. The deputy **utility** consumer counselor shall apply full efforts to the duties of the office and may not be actively engaged in any other occupation, practice, profession, or business.

(c) The deputy **utility** consumer counselor may appear on behalf of ratepayers, consumers, and the public in **the following**:

- (1) Hearings before the federal energy regulatory commission.
- (2) Appeals from the orders of the federal energy regulatory

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commission. ~~and~~

(3) All other proceedings, including proceedings before federal agencies, and suits and actions in which the subject matter of the action affects the consumers of a utility, motor carrier, or railroad doing business in Indiana.

(d) The deputy **utility** consumer counselor may establish and maintain an office in Washington, D.C. The deputy **utility** consumer counselor may, with the approval of the **utility** consumer counselor, ~~the governor, and the budget agency~~ employ and fix the compensation of accountants, utility economists, engineers, attorneys, stenographers, or other assistance necessary to carry out the duties of the office of the deputy **utility** consumer counselor. The compensation of the deputy **utility** consumer counselor and the staff shall be paid from an appropriation made for that purpose by the general assembly, or with the approval of the governor and the budget agency, from the contingency fund established under IC 8-1-6-1.

(e) The deputy **utility** consumer counselor may employ, with the approval of the **utility** consumer counselor, ~~the governor, and the budget agency~~, additional stenographers, examiners, experts, engineers, assistant counselors, accountants, and consulting firms with expertise in utility, motor carrier, or railroad economics or management or both, at salaries and compensation and for a length of time as the **utility** consumer counselor ~~the governor, and the budget agency~~ may approve for a particular case or investigation. The compensation for additional personnel together with the cost of transportation, hotel, telegram, and telephone bills while traveling on public business shall be paid from the expert witness fee account, or, with the approval of the governor and the budget agency, from the contingency fund established under IC 8-1-6-1 on warrants drawn by the auditor of state, sworn to by the parties who incurred the expenses.

(f) Any expenses incurred by the regular staff of the office of the deputy **utility** consumer counselor and approved by the deputy **utility** consumer counselor shall be charged and paid from the contingency fund established under IC 8-1-6-1.

SECTION 25. IC 8-1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 2. (a) All fees ~~herein~~ prescribed **in this chapter** shall be paid into the treasury of the state of Indiana through the secretary of the commission and quietused into an account to be known as the commission public utility fund account. This account shall be used for enforcing the provisions of IC 8-1-1 and IC 8-1-2 and shall be utilized only for the purpose of funding the expenses of the commission and the **utility** consumer counselor in

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1 amounts not in excess of their respective appropriations by the general
 2 assembly, plus the contingency fund. All appropriations under this
 3 chapter paid out of the commission public utility fund account shall be
 4 subject to the prior approval of the general assembly, the governor, and
 5 the ~~state~~ budget agency.

6 (b) Fees collected from municipalities under IC 8-1-2-85 shall also
 7 be deposited in the commission public utility fund account, as if they
 8 were fees collected from public utilities under this chapter.

9 SECTION 26. [EFFECTIVE UPON PASSAGE] (a)
 10 **Notwithstanding IC 8-1-1.1, as in effect January 1, 2010, the term**
 11 **of office of the utility consumer counselor appointed under**
 12 **IC 8-1-1.1-3, as in effect January 1, 2010, expires January 1, 2011.**

13 (b) The successor of the utility consumer counselor described in
 14 subsection (a) shall:

15 (1) be elected at the 2010 general election; and

16 (2) take office January 1, 2011;

17 as provided in this act.

18 (c) This SECTION expires January 1, 2012.

19 SECTION 27. An emergency is declared for this act.

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